

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light
Company for Approval of FPL SolarTogether
Program and Tariff

Docket No. 20190061-EI

Filed: June 14, 2019

**VOTE SOLAR'S MOTION FOR ADMINISTRATIVE HEARING
ON FPL SOLARTOGETHER PROGRAM AND TARIFF**

In accordance with Florida Statutes Sections 129.569 and 120.57 and Rules 28-106.201 and 28-106.204, Florida Administrative Code, and subject to its contemporaneous Motion to Intervene, Vote Solar requests the Florida Public Service Commission ("Commission") to schedule and conduct an evidentiary hearing without first issuing a Proposed Agency Action ("PAA") order on Florida Power & Light Company's ("FPL") petition for approval of its SolarTogether Program and Tariff ("Petition"). In support of this motion, Vote Solar states:

1. On March 13, 2019 FPL filed its Petition seeking Commission approval of a proposed SolarTogether Program and Tariff (Tariff or Program). In its Petition, as part of the Tariff approval request, FPL is requesting Commission approval of a new program with an initial capacity of 1,490 megawatts of solar photovoltaic facilities (Solar PV) comprised of twenty 74.5 megawatt units.¹

2. On March 21, 2019 Commission Staff issued its recommendation that the Tariff be suspended to "allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission an informed recommendation on the tariff proposal."

¹ See Petition by Florida Power & Light Company for Approval of FPL SolarTogether Program and Tariff, FPSC Docket No. 20190061-EI, March 13, 2019 (hereinafter "Petition") at 4.

3. On April 22, 2019 the Commission issued Order No. PSC-2019-0143-PCO-EI, finding that Staff's justification for suspending the Tariff constituted good cause consistent with the requirement of Section 366.06(3), and thus ordered the Tariff suspended.

BACKGROUND

4. As more fully documented in its contemporaneous Motion to Intervene, Vote Solar is a registered 501(c)3 nonprofit grassroots advocacy and public policy organization whose purpose is to help bring solar energy into the mainstream across the U.S. Vote Solar seeks to promote the development of solar at every scale, from distributed rooftop solar to utility-scale plants. Vote Solar has over 80,000 members nationally, including over 30,000 members in Florida, a substantial number of whom reside within FPL's service territory.

5. Vote Solar participates in energy related proceedings across the country in support of pro-solar state and federal policies. In the process, Vote Solar has gained valuable and broad expertise that it seeks to share with the Commission.

6. Vote Solar appreciates FPL's willingness to share information concerning its proposed program, and hopes to collaborate with FPL and the Commission on the important issue of expanding cost-effective clean energy access for all Floridians. Several aspects of the Company's SolarTogether program are novel and warrant scrutiny, from both a state and national perspective, and Vote Solar believes that the Commission and the public would therefore benefit from early, robust discussion and stakeholder engagement prior to the Commission voting on the proposed SolarTogether tariff.

DISCUSSION/ARGUMENT

7. FPL's Petition, which is in many ways a case of first impression due to enormous size and scope, raises myriad factual, legal, policy, and procedural issues that warrant the full and

thorough scrutiny that can be brought to bear only through an evidentiary proceeding.

8. The Commission is not required by rule or statute to process FPL's tariff filing and accompanying program using the PAA procedure; its election to use – or not use – the PAA procedure is discretionary. For the reasons set forth herein, the Commission should not process FPL's proposed SolarTogether Program and Tariff using the PAA process but should instead schedule an evidentiary hearing. In light of the passage to time since FPL's filing of the Petition in mid-March, it is clearly advantageous to the Commission, FPL and its customers, and other parties for the Commission to bypass a PAA procedure in favor of proceeding directly to an administrative hearing.

9. By this motion, Vote Solar is requesting a hearing. Other parties may also request a hearing if the Commission chooses to proceed under the PAA format, with the result being that the PAA process will only result in avoidable delay and administrative inefficiency. Scheduling an evidentiary hearing on the front end, would be more efficient and cost-effective and would significantly reduce the expenditure of time and resources that would otherwise be required by Staff, FPL and other parties to the Docket. Perhaps more importantly to FPL as to the implementation of its Tariff, a final decision would be reached in a shorter period of time.

10. Vote Solar's listing of disputed issues of material fact, disputed legal issues, and ultimate facts alleged are presented in its motion to intervene and also included below. The number, breadth and depth of issues presented and to be resolved clearly indicate the need for a full hearing on the front-end, as opposed to a PAA process, which would likely be followed by requests for and the conduct of an evidentiary hearing. Proceeding via evidentiary hearing with the availability of discovery and cross examination of witnesses will effectively and efficiently assist the Commission and parties in understanding and disposing of disputed issues that are presented.

11. Sections 120.569 and 120.57, Florida Statutes clearly provide an affected party with the absolute right to request an administrative hearing to decide the disputed issues of fact and law – which in the case of the Petition are many and diverse. Vote Solar hereby asserts that its substantial interests, as well as those of FPL, its customers, Solar PV developers, and other intervenors will be affected by any PAA order issued by this Commission. Pursuant to the referenced sections of Chapter 120, Florida Statutes, Vote Solar requests that the Commission set this matter directly for hearing without the interim step of issuing a PAA order. Doing so will avoid many months of delay associated with the issuance of a protested PAA order that would ultimately require an evidentiary hearing.

12. Based on information provided by FPL, its SolarTogether Program, if fully subscribed, would be the largest utility-sponsored shared solar offering in the United States² and in fact would double the amount of existing dedicated shared solar capacity. FPL's residential customer allocation – estimated at 74,500 customers – will dwarf the estimated 11,000 customers in FPL's service territory with rooftop solar installations.³ A newly proposed program of this enormous scale warrants a full evidentiary hearing prior to a Commission decision.

13. At the very least, a program of this scale, and one of first impression, demands a comprehensive analysis of how customers will benefit (including analysis of the “benefit rate” that constitutes the financial benefit for participants); how the timing of customers signing up will impact the benefits they receive; how the program will be marketed; and whether there are adequate measures in place to ensure customer satisfaction, protection and retention.

² See FPL Press Release, “FPL announces plans for the largest community solar program in the U.S.,” dated March 13, 2019, available at <http://newsroom.fpl.com/2019-03-13-FPL-announces-plans-for-the-largest-community-solar-program-in-the-U-S>.

³ See Petition at 3.

14. An offering of this scale raises important questions about how FPL plans to engage with the state's growing solar industry to ensure that the most cost-effective solar resources are being captured for customers' benefit, to maximize cost savings for all and to comply with all applicable law. FPL's Petition, in addition to its request for approval of a Tariff, also includes a request that the Commission authorize FPL to build and own some 1,490 megawatts of Solar PV generating facilities. FPL's proposed 1,490 megawatts of Solar PV comprises some 20 individual units of 74.5 megawatts each,⁴ falling just short of the 75-megawatt threshold at which FPL would be required to use a competitive solicitation (RFP) process.⁵ As part of its inquiry into whether this program is in the public interest, the Commission should question whether FPL's intended means of procurement is capturing the most cost-effective solar resources; and if not, whether FPL is acting prudently by investing so heavily in solar resources while ignoring potentially lower cost resources from third party solar providers and whether FPL's proposed plan to build and own 1,490 megawatts of Solar PV is consistent and compliant with applicable law. Importantly, FPL's proposed 1,490 megawatts additions would join the already substantial number of megawatts constructed, or planned to be constructed, by FPL pursuant to solar rate base adjustments (SoBRA), all of which also fall just below the 75 megawatt threshold.

15. A novel aspect of FPL's proposal is the benefit-sharing structure of the expected \$139 million in net benefits.⁶ Vote Solar recognizes FPL's forward-thinking approach,

⁴ *Id.* at 3.

⁵ Pursuant to Rule 25-22.082(3), F.A.C., an electric utility must "evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP)" before filing a petition for determination of need pursuant to the Florida Electrical Power Plant Siting Act – which does not apply to facilities under 75 megawatts in capacity. *See* Sec. 403.506(1), Fla. Stat.

⁶ *Id.* at 4, 8.

but more importantly also believes that all stakeholders would benefit from additional discussion about how risks and benefits are being determined; how they are allocated among participants and non-participants; how unsubscribed capacity will be addressed; and how the various risks and benefits will be treated from an accounting perspective.

16. Vote Solar is also concerned that lower-income Floridians face high energy burdens, meaning that an outsized portion of their income goes towards home energy bills, including electricity. For example, studies indicate that on average, half of the low-income households in Miami have an energy burden greater than 7.2 percent of household income, and a quarter of them, over 12 percent. The national average is 3.5 percent.⁷ FPL claims that participating customers will begin to save money under this program after seven years of participation, however Vote Solar is concerned that such savings may not be available to lower-income customers due to the proposed structure of program. Vote Solar has considerable experience across the country working with utilities and regulators to design programs that maximize participation for lower-income customers. Vote Solar believes that the Commission would benefit from a discussion of how the program can be improved upon in order to ensure that all Floridians – especially those struggling with high electric bills – are able to benefit from FPL's proposed Program.

DISPUTED ISSUES OF MATERIAL FACT

17. Vote Solar reserves the right to identify additional disputed issues of material fact and law based on additional information submitted by Petitioner in this proceeding.

18. Vote Solar anticipates that the disputed issues of material fact in this proceeding include, but are not limited to, the following:

⁷ <https://aceee.org/sites/default/files/pdf/fact-sheet/ses-florida-100917.pdf>.

- a. Whether the Petitioner's program appropriately reflects the costs and benefits to customers participating in the program?
- b. Whether the Petitioner's program appropriately reflects the costs and benefits to the general body of ratepayers as a whole?
- c. Whether the Petitioner's program utilizes the most cost-effective and competitively priced solar energy resources available?
- d. Whether the Petitioner's program properly values solar energy resources?

DISPUTED LEGAL ISSUES

19. Disputed legal issues include, but are not limited to, the following:
 - a. Whether Petitioner has met its burden of proof in this matter;
 - b. Whether and to what extent FPL's proposed program and tariff are in the public interest;
 - c. Whether it is appropriate and lawful for FPL to seek approval of construction of new solar facilities via a request for tariff approval;
 - d. Whether FPL's request for tariff approval and for approval to construct new generation should be addressed by separate, independent proceedings; and,
 - e. Whether FPL's request for approval to construct 1,490 megawatts of new generation capacity meets the intent and requirement of applicable law.

STATEMENT OF ULTIMATE FACTS ALLEGED AND AT ISSUE

20. Ultimate facts alleged and at issue include, but are not limited to, the following:
 - a. FPL is required to meet its burden of proof in this matter;
 - b. Approval of FPL's petition may materially adversely affect FPL's customers, including Vote Solar members; and

- c. Approval of FPL's program and tariff as proposed may not be in the public interest.

RULES AND STATUTES JUSTIFYING RELIEF

21. The rules and statutes that entitle Vote Solar to intervene and participate in this proceeding include, but are not limited to:

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.04(1), Florida Statutes;
- d. Section 366.05(1)(e), Florida Statutes;
- e. Section 366.06, Florida Statutes;
- f. Chapter 403, Florida Statutes;
- g. Rule 28-106.201, Florida Administrative Code;
- h. Rule 28-106.205, Florida Administrative Code.

**STATEMENT REQUIRED BY RULE 28-106.204(3),
FLORIDA ADMINISTRATIVE CODE**

22. Vote Solar has contacted counsel for FPL and the Office of Public Counsel and represents that FPL advised that it objects to this Motion and reserves the right to file a response; and OPC advised that it takes no position.

23. Copies of all notices, pleadings and other documents with respect to this Motion should be furnished to:

Rich Zambo
Richard A. Zambo, P.A.
Fla. Bar No. 312525
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
Email: richzambo@aol.com
Phone: 772.225.5400

Marsha E. Rule
Rutledge Ecenia, P.A.
Fla. Bar No. 0302066
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
Email: marsha@rutledge-ecenia.com
Phone: 850.681.6788

Vote Solar
Katie Chiles Ottenweller
Southeast Director
151 Estoria Street SE
Atlanta, GA 30316
Email: Katie@votesolar.org
Phone: 706.224.8107

WHEREFORE, Vote Solar respectfully requests that the Commission grant its Motion for an evidentiary hearing in this Docket.

Respectfully submitted on this 14th day of June, 2019.

/s/ **Rich Zambo**

Richard A. Zambo
Richard A. Zambo, P.A.
Fla. Bar No. 312525
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
richzambo@aol.com
Phone: 772.225.5400

Marsha E. Rule
Rutledge Ecenia, P.A.
Fla. Bar No. 0302066
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
marsha@rutledge-ecenia.com
Phone: 850.681.6788

Attorneys for Vote Solar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above motion has been furnished to the following by electronic mail on the 14th day of June, 2019:

Walter Trierweiler
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
wtrierwe@psc.state.fl.us

J.R. Kelly/Stephanie Morse
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee FL 32399
(850) 488-9330
kelly.jr@leg.state.fl.us
Rehwinkel.charles@leg.state.fl.us

Kenneth Hoffman
Florida Power & Light Company
134 W. Jefferson Street
Tallahassee, FL 32301
Ken.hoffman@fpl.com

Maria Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
maria.moncada@fpl.com

George Cavros, Esquire
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd.
Fort Lauderdale, FL 33334
George@cavros-law.com

Advanced Energy Economy
Dylan Reed/Caitlin Marquis
dreed@aee.net
cmarquis@aee.net

Jon Moyle/Karen Putnal/Ian Waldick
Florida Industrial Power Users Group
c/o Moyle Law Firm, PA
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
iwaldick@moylelaw.com

Sierra Club
Diana Csank
50 F Street NW, Eighth Floor
Washington DC 20001
Diana.Csank@sierraclub.org

Jennifer Green
P.O. Box 390
Tallahassee FL 32302
office@libertypartnersfl.com
Represents: Liberty Partners

Walmart Inc. (Eaton)
Stephanie U. (Roberts) Eaton
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem NC 27103
seaton@spilmanlaw.com

Walmart Inc. (Williamson)
Derrick Price Williamson
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg PA 17050
dwilliamson@spilmanlaw.com

/s/ Marsha Rule